



## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Exemption for Exclusive Area Agreements at Certain Airports

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice.

**SUMMARY:** TSA is providing notice of temporary exemptions the agency is granting to three airport operators to permit them to enter into Exclusive Area Agreements (EAA) with Amazon Air, a subsidiary of Amazon.com Inc. The exemption applies to the following airport operators: Cincinnati/Northern Kentucky International Airport (CVG), Baltimore/Washington International Thurgood Marshall Airport (BWI), and Chicago Rockford International Airport (RFD).

**DATES:** These exemptions take effect on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and remain in effect until modified or rescinded by TSA through a notice published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Eric Byczynski, Airport Security Programs, Aviation Division, Policy, Plans, and Engagement; email to: [eric.byczynski@tsa.dhs.gov](mailto:eric.byczynski@tsa.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Purpose

TSA's regulations provide that airport operators may enter into EAAs only with aircraft operators or foreign air carriers, subject to TSA approval of an amendment to each airport operator's airport security program (ASP). *See* 49 CFR 1542.111. Amazon Air is not an aircraft operator or foreign air carrier, but conducts significant operations at three airports on behalf of aircraft operators.

TSA has determined it is in the public interest to authorize these airport operators to enter into EAAs with Amazon Air because this action will create operational and economic efficiencies for the airport operators and Amazon Air, to the economic benefit of the public and without detriment to security. The exemptions permit these airports to leverage significant private sector technologies with respect to access control and monitoring systems that enhance security and minimize insider threat. The exemptions will also facilitate the rapid hiring of significant numbers of new personnel to support Amazon Air's expanded presence at these locations, aiding the economy in the surrounding areas. Finally, the exemptions will permit TSA to exercise direct regulatory oversight of Amazon Air concerning the security functions they will perform under the EAAs. All other provisions of 49 CFR 1542.111 will apply to any EAA executed under these exemptions.

## **II. Background**

### *A. Airport Security*

TSA administers a comprehensive regulatory program to govern the security of aviation, including standards for domestic airports, domestic aircraft operators, and foreign air carriers. The security requirements for domestic airports are codified at 49 CFR part 1542 and include minimum standards for access control procedures, identification (ID) media, passenger screening, criminal history records checks (CHRCs) of airport workers, law enforcement support, training, contingency plans, TSA inspection authority, and incident management. These regulations require airport operators to conduct specified security measures in the secured area,<sup>1</sup> air operations area (AOA), and security identification display area (SIDA) of the airport. Part 1542 requires airports to

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<sup>1</sup> 49 CFR 1540.5 for definitions of terms used throughout this notice.

develop and follow TSA-approved ASPs<sup>2</sup> that establish security procedures specific to each airport, and Security Directives, which apply to all airports.

TSA recognizes that, in certain circumstances, these security measures may be performed more effectively or efficiently by another TSA-regulated party, such as an aircraft operator or foreign air carrier, operating on the airport. Therefore, under 49 CFR 1542.111, TSA may approve an amendment to an airport's ASP that permits the airport operator to execute a legally binding EAA with an aircraft operator<sup>3</sup> or foreign air carrier.<sup>4</sup> Under the EAA, the aircraft operator or foreign air carrier assumes responsibility from the airport operator for specified ASP security measures in all or specified portions of the secured area, AOA, or SIDA.<sup>5</sup> TSA requires the EAA to be in writing, and signed by the airport operator and the aircraft operator or foreign air carrier.<sup>6</sup> TSA also prescribes in detail the required contents of the EAA, including a description of the measures that become the responsibility of the aircraft operator or foreign air carrier.<sup>7</sup>

EAA's are an established part of TSA's regulatory structure for airport operators, commonly used since 1978.<sup>8</sup> Currently, there are more than 70 EAA's in place with aircraft operators and foreign air carriers at domestic airports. EAA's are typically used when an entire airport terminal is serviced exclusively by one aircraft operator. At locations with EAA's, TSA conducts standard compliance inspections, and may issue violations of the security standard set forth in the EAA against the aircraft operator or foreign air carrier that holds the EAA.

#### *B. Entities Subject to the Exemptions*

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<sup>2</sup> 49 CFR 1542.105(a).

<sup>3</sup> 49 CFR part 1544.

<sup>4</sup> 49 CFR part 1546.

<sup>5</sup> 49 CFR 1542.111(a).

<sup>6</sup> 49 CFR 1542.111(b).

<sup>7</sup> 49 CFR 1542.111(b)(1)-(3).

<sup>8</sup> Published at 43 FR 60792 (Dec. 28, 1978).

These exemptions are limited to three airports—CVG, BWI, and RFD—and the operations of Amazon Air at these locations.

Amazon.com, Inc. is an American multinational technology company based in Seattle, Washington engaged in e-commerce, cloud computing, digital streaming, artificial intelligence, and cargo shipping. As of Spring 2021, Amazon reports that, less than 20 percent of Amazon’s cargo is shipped by air. Due in part, however, to the COVID-19 public health crisis and impact on the economy, cargo shipment has increased dramatically, with a corresponding relative increase in the total volume of air cargo.

Amazon’s subsidiary, Amazon Air, maintains operations at various domestic and international airports. Amazon Air owns air cargo aircraft, but does not operate the aircraft itself and is not an aircraft operator for purposes of TSA’s regulations. Amazon Air leases the aircraft to certain aircraft operators holding TSA full all-cargo security programs.<sup>9</sup> Amazon Air then acts as an authorized representative for these full all-cargo aircraft operators<sup>10</sup> at certain airports, including the three covered by these Exemptions.

As an authorized representative<sup>11</sup> at these locations, Amazon Air performs security functions under TSA’s Full All-Cargo Aircraft Operator Standard Security Program on behalf of these aircraft operators, including the responsibility for preventing access to both aircraft and the cargo bound for those aircraft, and providing the Ground Security Coordinator, the individual at the facility responsible for coordinating these security responsibilities. Amazon Air has also assumed security responsibility for performing cargo acceptance and chain of custody; cargo screening, buildup, and

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<sup>9</sup> See 49 CFR 1544.101(h) for scope of a full all-cargo security program.

<sup>10</sup> For purposes of this exemption, applicable full all-cargo aircraft operators include Atlas Air, Air Transport International, ABX, Inc., and Sun Country Airlines.

<sup>11</sup> An “authorized representative” is a person who performs TSA-required security measures as an agent of a TSA-regulated party. Although the authorized representative may perform the measures, the TSA-regulated party remains responsible for completion, and TSA holds the TSA-regulated party primarily accountable through enforcement action of any violations. TSA may also hold the authorized representative accountable if it causes the regulated party’s violation. See 49 CFR 1540.105.

consolidation; recordkeeping; cargo training; aircraft searches; screening “jump seaters”<sup>12</sup> and their property; incident reporting; comparing jump seaters and individuals who have access to aircraft and cargo against watchlists; and participation in table top exercises.

Based on logistics and Amazon Air’s current transportation network, these airports have become high capacity locations. As noted above, these increases are due, in part, to the COVID pandemic, the public’s heightened reliance on online shopping for basic goods, and the Nation’s needs to move personal protective equipment and related products quickly. Amazon Air estimates that these trends will not significantly diminish when the public health crisis ends.

To address the current and anticipated demand, Amazon Air is increasing use of its own employees for company services and operations, rather than contracting out for services. Amazon Air already has employees in place at the three locations within the scope of this exemption and has represented to TSA that it intends to hire significantly more employees over the next 12 to 18 months.

Hiring surges can occur at all airports throughout the year due to seasonal changes or construction. Most airports can plan ahead for these surges to ensure sufficient staffing in the airport badging offices to begin the vetting process and issue ID media to new employees. However, when a new or existing employer has a significant, sudden increase in employees, all airport vendors can be adversely affected by the strain this places on the airport badging system. It takes significant time to collect the biometric and biographic information needed to initiate CHRCs and security threat assessments (STA), adjudicate CHRCs, and issue the ID media.

Amazon Air has represented to TSA that it has the capability and capacity to assume certain security responsibilities under the ASPs at these airports. These security

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<sup>12</sup> The term “jump seater” refers to an off duty commercial pilot who is permitted to travel by using the jumpseat in the cockpit of a commercial aircraft operator.

responsibilities include physical control of access points at the locations; adjudicating CHRCs for disqualifying offenses and submitting STAs for its employees; issuing ID media; and conducting ID media accountability audits.

TSA has determined that Amazon Air possesses the latest, sophisticated access control and monitoring systems that enhance security by significantly restricting access to cargo and aircraft. Amazon Air is in the process of installing these systems at access points at these locations. As a subsidiary of a profitable, private sector leader in technology, Amazon Air benefits from ample resources to purchase advanced equipment as needed, without regard to local government budget restrictions that many airports face. This factor provides a level of assurance that the security capability will remain consistent and substantial. Amazon Air's independent economic stability also provides a level of assurance that it will be able to quickly obtain any necessary expertise it may need to carry out all of the EAA functions going forward.

### **III. Authority and Determination**

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.<sup>13</sup> TSA finds this exemption to be in the public interest for several reasons. First, TSA has evaluated Amazon Air's security apparatus with respect to access control and monitoring, vetting and ID media issuance, and cargo management and movement, and determined it to be modern, strong, and resilient. Second, Amazon Air's significant personnel expansion at these locations may strain the resources of airport operator and aircraft operator badging offices, adversely affecting other airport vendors, and limiting new hire capability. Amazon Air's ability under an EAA to initiate the employee vetting functions that the airport authorities would otherwise be required to conduct will more efficiently manage volume as needed. This factor should reap economic benefits for the surrounding areas in terms of employment,

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<sup>13</sup> See 49 U.S.C. 114(q).

and to other airport vendors who will not be adversely affected by a sudden increase in airport ID media issuance. Moreover, extending the authorities under an EAA to Amazon Air at these locations is consistent with Executive Order 13725 of April 16, 2016 (Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy )<sup>14</sup> to promote competition and reduce regulatory restrictions where possible. Finally, under the EAAs, TSA will have direct oversight of Amazon Air's security activities, rather than indirectly through an aircraft operator for which Amazon Air is an authorized representative. Given the scale of Amazon Air's commercial activities and physical infrastructure that must be secured at these airports, TSA compliance oversight will be more efficient and effective if conducted directly over Amazon Air.

Therefore, TSA has determined that it is in the public interest to grant CVG, BWI, and RFD an exemption from the provision in 49 CFR 1542.111 that limits the persons with whom an airport operator may execute an EAA to aircraft operators and foreign air carriers. Under this exemption, CVG, BWI, and RFD, respectively, may enter into an EAA with Amazon Air consistent with TSA EAA-requirements. These exemptions apply only to these airports and their respective EAAs with Amazon Air.

#### **IV. Exemptions**

*Applicability:* These exemptions apply to CVG, BWI, and RFD.

*Exemption:* For the duration of each exemption, CVG, BWI, and RFD, respectively, may apply for an amendment to their airport security program that permits the airport operator to enter into an EAA in accordance with 49 CFR 1542.111 with Amazon Air, notwithstanding that Amazon Air is not a TSA-regulated aircraft operator or foreign air carrier. The terms of the EAA replace the requirements in 49 CFR part 1542 so long as Amazon Air complies with the EAA. This amendment and the EAA

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<sup>14</sup> Published at 81 FR 23417 (April 20, 2016).

must require Amazon Air to comply with all relevant Security Directives and Emergency Amendments issued by TSA.

*Duration:* These exemptions take effect on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. At CVG, BWI, and RFD, Amazon Air may begin performing as an EAA-holder on the date on which TSA approves an amendment to the respective airport operator's airport security program implementing each executed EAA. Each exemption will remain in effect while the airport operator's TSA-approved airport security program remains in effect. TSA may direct revisions to the ASP amendment and EAA with regard to one or more of the covered airport operators, for security reasons under 49 CFR 1542.105(b). TSA may rescind the ASP amendment and EAA, and may rescind or modify the exemption, with regard to one or more of the covered airport operators, at any time.

Dated: July 19, 2021

David P. Pekoske,

*Administrator.*

[FR Doc. 2021-15902 Filed: 7/22/2021 4:15 pm; Publication Date: 7/26/2021]